

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government / Promote personal responsibility - HB 613 requires the Criminal Justice Standards and Training Commission to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers and allows the Commission to impose sanctions for failing to comply with the requirements of this act.

B. EFFECT OF PROPOSED CHANGES:

Currently, Florida Statutes do not establish a model policy regarding the conduct of law enforcement officers in the pursuit of fleeing vehicles. Rather, policies regarding the conduct of law enforcement officers in the pursuit of fleeing vehicles are governed by local policies.

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers. The Commission is statutorily created by section 943.11(1)(a), F.S., and the responsibility to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines has been statutorily assigned to the Commission by section 943.12(5), F.S. The Commission is responsible for certifying, and revoking the certification of, officers, instructors, including agency in-service training instructors, and criminal justice training schools.¹

HB 613 requires the Commission to establish a model policy regarding the specific philosophies, factors, procedures and circumstances governing the conduct of law enforcement officers who pursue a fleeing vehicle. The model policy shall, at a minimum, contain the following components:

- A statement describing that the philosophy of the model policy is that the safety of persons affected by a vehicle pursuit to the public and law enforcement officers with the consequences of the failure to pursue such vehicle.
- The factors to consider before initiating or terminating a vehicle pursuit and the standards for determining whether to initiate or terminate a vehicle pursuit.
- The procedures, tactics, and technologies used during vehicle pursuits.
- The responsibilities of the pursuing officers, the officers supervising the pursuit, the dispatcher, and air support personnel.
- The procedures governing interjurisdictional pursuits.
- The procedures governing the care of any person injured during the pursuit.
- The contents of pursuit reports.
- The procedures used to evaluate each pursuit.

This bill also requires state and local law enforcement agencies to adopt the Commission's model policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy.

The Commission is mandated to develop by July 1, 2007, training objectives for a seven-hour course covering emergency vehicle operations and the conduct of vehicle pursuits that persons seeking law enforcement certification after that date must complete. State and local agencies are directed to provide in-service training that complies with Commission-approved learning objectives; the training shall consist of at least 8 hours of classroom and skills-based training every 3 years.

¹ Section 943.12(3), F.S.

This bill provides that the Commission may impose licensing sanctions and seek injunctive relief for failure of an agency to comply with the requirements of this bill.

C. SECTION DIRECTORY:

Section 1. Requires the Criminal Justice Standards and Training Commission to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to FDLE, there would be significant costs on the Criminal Justice Standards and Training Commission (Commission) for training schools. Currently, Commission-certified training schools that have driving ranges do not have adequate facilities and equipment to deliver a vehicle pursuit skills course for basic recruits and would need to be upgraded. This bill also requires in-service training (skills) in vehicle pursuits that the over 40,000 certified law enforcement officers in the state would be required to complete. Training schools do not currently have the manpower to provide this training.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to FDLE, developing a model policy will require public meetings/hearings to obtain citizen input. Not only will this process be lengthy, but could also be costly. Providing assistance to agencies that need help in developing a policy and procedures could also be time intensive.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions, including cities and counties, are obligated to establish a written policy governing the conduct of law enforcement officers who pursue a fleeing vehicle, provide in-service training in the conduct of vehicle pursuits, and certify annually to the commission

that it is in compliance, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions.

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on the 2003 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.8 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to implement written policy governing the conduct of the agency’s law enforcement officers who pursue a fleeing vehicle, in expenditures to comply with CJSTC’s model policy.

If it is determined that this bill does constitute a mandate, it does not include constitutionally required language that provides that the Legislature has determined that this legislation fulfills an important state interest, in accordance with Section 18 of Article VII of the State Constitution.

3. Other:

Sovereign Immunity

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers; state and local law enforcement agencies will be required to adopt the Commission’s model policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy. Requiring a model policy may subject state and local law enforcement agencies to tort liability.

Section 13, Art. X of the Florida Constitution provides, “[p]rovision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating”. The Florida Legislature exercised this authority when it enacted section 768.28, F.S., which waives sovereign immunity and imposes liability on the state or an agency or subdivision of the state for any tort claim in which a private individual would be liable under similar circumstances. An agency or subdivision of the state includes counties and municipalities.²

This first question is whether a duty is owed. “There can be no governmental [tort] liability unless a common law or statutory duty of care existed that would have been applicable to an individual under similar circumstances.”³ “Where a defendant’s conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon [the] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses⁴.”

The next question is whether the state or an agency or subdivision of the state will be immune from liability notwithstanding the duty placed upon them. Sovereign immunity does not shield acts that are “operational” in nature but only those that are “discretionary⁵.” An act is considered discretionary if it involves fundamental questions of policy or planning.⁶ Conversely, an act is considered operational if it reflects a secondary decision as to how policies or plans will be implemented.⁷

Pending Legislation

² See section 768.28(2), F.S.

³ *Kaisner v. Kolb*, 543 So.2d 732, 734 (Fla. 1989); see also *Trianon Park Condominium Ass’n Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985).

⁴ *Kaisner*, at 735.

⁵ *Id.* at 737.

⁶ *Pinellas Park v. Brown*, 604 So.2d 1222 (Fla. 1992).

⁷ *Id.*

HB 199, sponsored by Representative Patterson, is pending legislation that addresses the sovereign immunity issue discussed above. HB 199 provides that an employing law enforcement agency is not liable for certain damages caused by a person fleeing from a law enforcement officer in a motor vehicle (hot pursuit) if:

- the pursuit is not conducted in a reckless manner;
- the officer reasonably believes that the person fleeing has committed a forcible felony; and
- the pursuit is conducted pursuant to a specified written policy governing high-speed pursuit, and the officer received instructional training on such policy.

HB 199 includes a severability clause in the event that any provision of the act is held invalid. The act applies to causes of action that accrue on or after the effective date of the act; the act takes effect upon becoming a law.

Separation of Powers

HB 613 may be an unlawful delegation of legislative authority since it requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement.

Article II, section 3 of the Florida Constitution, provides, “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” The separation-of-power doctrine prevents the legislature from delegating its constitutional duties⁸. Legislative power involves the exercise of policy-related discretion over the content of law⁹. The Supreme Court in Askew adopted a formal interpretation of the delegation-of-powers doctrine, “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine¹⁰.” However, the Court warned, “[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of law¹¹.”

It appears that HB 613 may violate the separation-of-power doctrine since this bill requires the Criminal Justice Standards and Training Commission (Commission), along with comments from the public, to establish a model policy rather than the Legislature. On the other hand, if the minimum components for the model policy stated in this bill are the Legislatures intended policy guidelines, it may be so lacking that neither the Commission nor the courts can determine whether the Commission is carrying out the intent of the Legislature.

B. RULE-MAKING AUTHORITY:

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers. Section 943.11(1)(a), F.S. provides, “[t]here is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement.” Section 943.12(2), F.S., provides that the Commission shall be responsible for the execution, administration, implementation, and evaluation of its powers, duties, and functions including any rules promulgated or policies established. No other rule making authority is needed to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 943.125, F.S., specifically addresses law enforcement agency accreditation and specifically states, “It is the intent of the Legislature that law enforcement agencies in the state be upgraded and

⁸ See Board of Architecture v. Wasserman, 377 So.2d 653 (Fla. 1979).

⁹ See State ex rel. Taylor v. City of Tallahassee, 177 So. 719 (Fla. 1937).

¹⁰ Askew v. Cross Key Waterways, 372 So.2d 913, 921 (Fla. 1978).

¹¹ Id at 918-919.

strengthened through the adoption of meaningful standards of operation for those agencies.” The statute outlines specific law enforcement issues that should be addressed through an accreditation program, the first of which is vehicle pursuits.

According to FDLE, requiring the Commission to craft a one-size-fits-all model policy on police pursuits may present a difficult task. Florida Highway Patrol’s pursuit guidelines, applicable primarily to highways and interstates, will be different than what is needed by the City of Orlando, where pursuits would be on residential and highly congested streets. The needs of an agency with primarily marked units in handling pursuits will be different than those of an agency like FDLE that has mainly unmarked units. Agencies with chase option alternatives, such as a helicopter, will have different needs than a small agency with no such resource. When completed, it is possible that an agency will find that the policy does not address the unique needs of his/her agency. At best, a model policy would have to be stated in generalities, which may be less specific than many agencies’ policies already in effect.

This bill prohibits anyone who has not taken the basic pursuit training from taking the state exam after July 1, 2007; however, the Commission rules allow for up to four years to take the state certification exam after completion of training. Also, the seven-hour training requirement, to be conducted every three years, in emergency vehicle operations and in the conduct of vehicle pursuits is not consistent with current four-year cycles outlined in section 943.135, F.S.

This bill provides that the Commission may impose licensing sanctions and seek injunctive relief for failure of an agency to comply with the requirements, but the Commission has no licensure jurisdiction over agencies. The only sanction that could be applied would be to discipline the agency head (i.e. sheriff).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES